

year, Members, while on military leave, shall be paid their salary and fringe benefits for a period or periods not exceeding twenty-one (21) calendar days. Any unused military leave in a federal fiscal year shall be carried over to the next year. Any unused military leave shall expire two (2) years after it has accrued.

Section 2. Should a Member or a probationary police officer be inducted or enlisted into active duty in the Armed Forces of the United States, he or she shall be granted a leave of absence, without pay, for the duration of his or her original term of service. He or she shall accrue seniority the same as he or she would under continuous employment in the Louisville Metro Police Department, provided, however, that upon his or her return to duty as a police officer, he or she successfully completes his or her probationary period. A Member who is ordered to active duty and serves a minimum of six (6) months in the Armed Forces of the United States shall upon return be credited with eighty (80) hours of annual leave.

Section 3. A Member inducted or enlisted into active duty with the Armed Forces of the United States, any Reserve Unit or the National Guard for a period in excess of thirty (30) days shall be eligible for continuation of medical (dental, vision, or any other) insurance at the same level as active Members at the same cost as active Members.

Section 4. A Member ordered to active duty shall receive pay and benefits as specified below:

- A. The Member shall retain all vacation time accrued prior to the beginning date of Member's issued order to active duty. No Member shall be forced to take, use, or burn vacation, personal or other leave time while on active duty with the Armed Forces of the United States.
- B. Members on military leave that appear on active Louisville Metro Police Merit Board promotional eligibility lists, shall be considered for promotional vacancies consistent with Police Merit Board rules and Kentucky law.

## ARTICLE 17 - DISCIPLINARY PROCEDURE AND BILL OF RIGHTS

### Section 1: Receipt of Complaints

- A. Any complaint taken from any individual alleging misconduct or rule violations on the part of any Member, shall be taken as follows:
  - i. If the complaint alleges criminal activity on behalf of a Member, the allegations may be investigated without a signed, sworn complaint of the individual;
  - ii. If the complaint alleges abuse of official authority or a violation of rules and regulations of the department, an affidavit, signed and sworn to by the complainant, shall be obtained;
  - iii. If a complaint is required to be obtained and the individual, upon request, refuses to make allegations under oath in the form of an affidavit, signed and sworn to, the department may investigate the allegations, but shall bring charges against the Member only if the department can independently substantiate the allegations absent the sworn statement of the complainant;

- iv. Nothing in this section shall preclude the department from investigating and charging a Member both criminally and administratively.
- v. The complaint procedure as defined in KRS 15.520 and this Agreement shall be explained to the complainant by a LMPD commanding officer or Professional Standards Unit (PSU) investigator.
- vi. If the complainant elects to file a formal complaint, the complaint shall be taken in the form of an affidavit, signed and sworn to by the complainant.
- vii. If the complainant declines to file a formal complaint, a complaint inquiry form shall be completed. The commanding officer or the PSU investigator shall record as many specifics as possible.
- viii. If the complainant declines to file a formal complaint under oath, the PSU shall do one of the following:
  - a) Complete a complaint inquiry form and forward to the Chief's Office if the allegations involve criminal activity.
  - b) Complete a complaint inquiry form if there is information independent of that obtained from the citizen substantiating the allegations of misconduct.
  - c) Handle the complaint in an informal manner. In these cases, no investigative paperwork is entered into a Member's personnel file.
- ix. The complaint inquiry form shall be maintained solely and exclusively by the PSU. The contents of this information shall be transmitted to the Chief or his designee for appropriate handling. If the Chief or his designee directs an investigation, the procedures outlined in KRS 15.520 and this Agreement shall be followed. If no investigation is directed by the Chief or his designee, the complaint inquiry form shall be destroyed ninety (90) days after receipt.

## Section 2: Manner of Investigation

- A. No Member shall be subjected to interrogation in a departmental matter involving alleged misconduct on his or her part, until forty-eight (48) hours have expired from the time the request for interrogation is made to the accused officer, in writing. The interrogation shall be conducted while the officer is on duty. The police officer may be required to submit a written report of the alleged incident if the request is made by the department no later than the subject officer's next tour of duty after the tour of duty during which the department initially was made aware of the charges. A Member required to submit a written report shall be informed in writing of the nature of the alleged misconduct or rule violations.
- B. The forty-eight (48) hour written notice shall include a copy of the complaint. In the event a written complaint does not exist, the forty-eight (48) hour notice shall include other written information sufficient to advise the Member of the specific allegations of misconduct.
- C. Questioning of Members shall be conducted only while the Member is on duty.
- D. All statements or interrogations of Members, complainants and other witnesses shall be electronically recorded. Statements obtained from complainants, either sworn or otherwise, shall be transcribed and sworn to. Non-recorded statements may be taken from a civilian witness who refuses to give a recorded statement.
- E. Upon request of the Member under investigation or his representative, the Member shall be provided a copy of the transcript of the recorded interrogation, if one has been made, and a copy

of the recording. The Member shall provide the Professional Standards Unit (PSU) with an audiotape, or technological equivalent at his expense.

- F. Metro Government shall provide the Member any written or recorded statements in the possession of the department in connection with any disciplinary action taken against the Member except for attorney work product. Likewise, the Member and the Lodge shall provide Metro Government with statements or other information regarding any disciplinary action that has been taken against a Member except for attorney work product. The written statement shall be provided to the Member or Metro Government within ten (10) days after a written appeal is filed with the Louisville Metro Police Merit Board.
- G. If discipline is imposed and the Member files a timely written appeal with the Louisville Metro Police Merit Board, Metro Government shall make available to testify at the hearing all current Members requested by the appealing Member or his counsel.
- H. The Professional Standards Unit (PSU) shall complete its investigation within a reasonable period of time of the Chief's directive or complaint.
- I. All complaints and PSU directed investigations begun after the effective date of this Agreement not involving criminal allegations shall be completed and forwarded to the Chief or his designee for review and disposition within one hundred and eighty (180) days of the complaint, initiation of the PSU investigation or a return of the case by the Chief or designee to PSU, whichever is later in time. In the event that Metro Government needs additional time to complete an investigation, prior to the expiration of the one hundred and eighty (180) days, Metro Government shall provide a written explanation to the Member and FOP setting forth the specific reasons for the need for additional time.
- J. The PSU shall provide a status update of its investigation in a timely manner upon request of the affected Member. This update will include an estimated completion date.
- K. No threats, promises, or coercions shall be used at any time against any police officer while he or she is a suspect in a criminal or departmental matter. Suspension from duty with or without pay, or reassignment to other than an officer's regular duties during the period shall not be deemed coercion. Prior to or within twenty-four (24) hours after suspending the officer pending investigation or disposition of a complaint, the officer shall be advised in writing of the reasons for the suspension.
- L. If a police officer is under arrest, or likely to be arrested, or a suspect in a criminal investigation, he shall be afforded the same constitutional due process rights that are accorded to any civilian, including, but not limited to, the right to remain silent and the right to counsel, and shall be notified of those rights before any questioning commences. Nothing in this section shall prevent the suspension with or without pay or reassignment of the police officer pending disposition of the charges.
- M. When a police officer has been charged with a violation of departmental rules or regulations, no public statements shall be made concerning the alleged violation by any person or persons of the local unit of government or the police officer so charged, until final disposition of the charges.
- N. No police officer as a condition of continued employment by the local unit of government shall be compelled to speak or testify or be questioned by any person or body of a nongovernmental nature.

### Section 3: Disposition of Investigation

- A. If a complaint is investigated by the PSU, the complaint and resulting investigation will be forwarded to the Chief or his designee. The Chief upon receiving the investigative findings and recommendations will review all complaints forwarded to his office and will handle the complaint in one of the following ways:
  - i. Unfounded
  - ii. Exonerated
  - iii. Closed by Exception
  - iv. Not Sustained
  - v. Sustained.
- B. On complaints where the Chief believes no misconduct has occurred, he will communicate in writing to the complainant and the Member that his review of the facts does not indicate any misconduct by the Member and will advise both parties of his intentions to dismiss the complaint.
- C. If after reviewing the complaint investigation, the Chief concludes the Member is guilty of misconduct or violations of the rules, regulations or procedures, the Chief may impose disciplinary action from a verbal or written reprimand to suspension to demotion to dismissal by providing in writing to the Member with particularity, the reasons therefore. The disciplinary action taken should be determined by the seriousness of the misconduct and by the extent of the wrongdoing or injury to the victim. It shall also be commensurate with the circumstances surrounding the total incident and with the Member's service record and prior sustained complaints.
- D. No previous discipline against a Member may be considered by Metro Government or the Chief as the basis for any subsequent discipline or an involuntary transfer except as follows:
  - i. A previous written reprimand may be considered for one (1) year following the issuance of the reprimand.
  - ii. A previous suspension of seventy-two (72) hours or less, or an involuntary transfer may be considered for three (3) years following the issuance of the suspension.
  - iii. A previous suspension of over seventy-two (72) hours may be considered for five (5) years following the issuance of the suspension.

#### Section 4: File Retention

- A. All PSU files shall be maintained in accordance with applicable statutes and regulations regarding archive retention.
- B. All PSU files will be maintained in accordance with Article 18, Personnel Files, of this Agreement.

#### Section 5: Critical Force Incidents

- A. When a Member is involved in the use of deadly force or in any incident that results in life threatening injuries or death, Metro Government shall notify the Lodge President or his designee and designated Lodge counsel. The Lodge shall provide Metro Government with appropriate telephone numbers for said notification.
- B. If a Member agrees to provide a statement to the Public Integrity Unit as a result of his use of deadly force or his action and conduct in any incident that results in life threatening injuries or

death, the Member shall be informed of his right to counsel. The Member shall also be informed when counsel is present and / or otherwise available for advice.

- C. Only the Member, Public Integrity Unit detective and / or his supervisor and Member's counsel shall be present during the Member's interview. Members shall not be required to provide a statement concerning the use of deadly force during a criminal investigation with Professional Standards Unit detectives present.
- D. Metro Government may require a Member involved in a use of deadly force incident resulting in an injury to take a drug and alcohol test pursuant to the procedures as established in Appendix 1, Drug Testing Policies and Procedures.
- E. A Member interviewed by the Public Integrity Unit shall be provided a copy of the transcript of the recorded interview and copies of their audio and video recordings.

#### Section 6: Hearings and Administrative Due Process Rights

- A. When a hearing is to be conducted by any appointing authority, legislative body, or other body as designated by the Kentucky Revised Statutes, the following administrative due process rights shall be recognized and these shall be the minimum rights afforded any police officer charged:
  - i. The accused police officer shall have been given at least seventy-two (72) hours' notice of any hearing;
  - ii. Copies of any sworn statements or affidavits to be considered by the hearing authority and any exculpatory statements or affidavits shall be furnished to the police officer no less than seventy-two (72) hours prior to the time on any hearing;
  - iii. If any hearing is based upon a complaint of an individual, the individual shall be notified to appear at the time and place of the hearing by certified mail, return receipt requested;
  - iv. If the return receipt has been returned unsigned, or the individual does not appear, except where due to circumstances beyond his control he cannot appear, at the time and place of the hearing, any charge made by the individual shall not be considered by the hearing authority and shall be dismissed with prejudice;
  - v. The accused police officer shall have the right and opportunity to obtain and have counsel present, and to be represented by the counsel;
  - vi. The appointing authority, legislative body, or other body as designated by the Kentucky Revised Statutes shall subpoena and require the attendance of witnesses and the production by them of books, papers, records, and other documentary evidence at the request of the accused police officer or the charging party. If any person fails or refuses to appear under the subpoena, or to testify, or to attend, or produce the books, papers, records, or other documentary evidence lawfully required, the appointing authority, legislative body, or other body as designated by the Kentucky Revised Statutes may report to the Circuit Court or any judge thereof the failure or refusal, and apply for a rule. The Circuit Court, or any judge thereof, may on the application compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court;
  - vii. The accused police officer shall be allowed to have presented, witnesses and any documentary evidence the police officer wishes to provide to the hearing authority, and may cross-examine all witnesses called by the charging party;
  - viii. Any police officer suspended with or without pay who is not given a hearing as provided by this section within sixty (60) days of any charge being filed, the charge then

- shall be dismissed with prejudice and not be considered by any hearing authority and the officer shall be reinstated with full back pay and benefits; and
- ix. The failure to provide any of the rights or to follow the provisions of this section may be raised by the officer with the hearing authority. The hearing authority shall not exclude proffered evidence based on failure to follow the requirements of this section but shall consider whether, because of the failure, the proffered evidence lacks weight or credibility and whether the officer has been materially prejudiced.

## ARTICLE 18 - PERSONNEL FILES

Section 1. Personnel records are the repositories of official information regarding an active, terminated or retired Member of Metro Government.

Section 2. Custody and Review

A. The Secretary Examiner of the Louisville Metro Police Merit Board shall be the official records custodian and shall be responsible for maintaining and securing all personnel files.

- i. Unless otherwise provided for, the content of a Member's personnel file shall be held in the strictest confidence.
- ii. Personnel files shall be available for administrative review by the Louisville Metro Police Merit Board and paid Members of their staff.
- iii. Information from a Member's personnel file shall be released to any other persons or agencies when Metro Government is ordered to do so by a lawful subpoena or order of a court or an administrative agency, or pursuant to an Open Records Request, or when permission to do so is received in writing from the Member. In the event a subpoena or Open Records Request is served on Metro Government, Metro Government shall immediately notify the Member and the Lodge. At the request of the Member, Metro Government shall wait three (3) days from receipt of an Open Record Request to comply with it. In no event shall Metro Government be required to wait beyond the legal requirement as contained in the Open Records law. Metro Government shall have no liability to any Member hereunder and the Member shall have no rights against Metro Government for compliance with this provision.
- iv. Metro Government shall be responsible for developing and following retention schedules which comply with appropriate laws and regulations for all records and personnel files. The following information contained in a Member's personnel file shall be considered matters of public record and may be released or verified without express permission of the Member:

- (a) Member's name
- (b) Member's dates of employment
- (c) Class or position held by Member

B. The duties of the Health and Safety Officer shall be maintained. The Human Resources Unit with the Louisville Metro Police Department shall maintain the official medical records file for each Member. A Member's medical records file becomes a part of the Member's official personnel medical file when Metro Government has received medical information concerning an application for workers' compensation, disability retirement, normal retirement, long-term disability claim or termination of employment.